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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,419	02/22/2002	Dwight Williams	50051	1039
22929	7590	06/30/2006		
SUE Z. SHAPER, P.C. 1800 WEST LOOP SOUTH SUITE 1450 HOUSTON, TX 77027			EXAMINER GANEY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/081,419

Applicant(s)

WILLIAMS, DWIGHT

Examiner

Steven J. Ganey

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on December 9, 2005 and March 22, 2006, which has been fully considered in this action.

Election/Restrictions

2. Claims 3, 4, 10-12 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 20, 2004.
3. Applicant's election without traverse of Species III, Figure 4, claims 1, 2, 5-9, 13 and 15-17 in the reply filed on April 20, 2004 is acknowledged.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1, 2, 5-8, 13, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In view of applicant's comments filed March 22, 2006, claims 1, 2, 5-8 and 17, recite both an apparatus(i.e. a fire fighting system) and the method steps of using the apparatus to fight a fire. It is not clear if applicant is claiming an apparatus type claim or a method type claim. The preamble is in apparatus form and is **not** to be understood as "A method of using a fire

fighting system comprising the steps of” or “A method of fighting a fire comprising the steps of”.

Claims 5 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are between the location of the line leading from the reservoir outlet to the water manifold inlet and the suction side of the pump. The claims **do not** positively recite the connection(i.e. essential structural cooperative relationship) of the water manifold inlet with the line. In claim 5, language such as --the pump water manifold inlet on-- should be inserted after the phrase “the reservoir outlet”. In claim 13, language such as --the pump water manifold inlet on-- should be inserted for the word “and”.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 5-8 and 17 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to neither a “process” nor a “machine,” but rather embrace or overlap two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2, 5-9, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollan et al in view of Williams.

Hollan et al shows a fire fighting system comprising a pump 33; an around-the-pump system comprising a fitting at 29, a water manifold inlet 30, a line 31 on the suction side of the pump, an injection jet pump 26, a line 40 on the discharge side of the pump and a water additive including a foam concentrate 17, except for the location of the fitting upstream of the water manifold inlet, the size of the pump and the reservoir water source. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fitting upstream of the water manifold inlet, since the drawing only shows a schematic drawing and the location of the fitting could be located upstream of the water manifold inlet without effecting the operation of the Hollan et al apparatus. Williams shows a fire fighting system using a 2000 or greater gpm pumps to fight fires. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a 2000 or greater gpm pump in the apparatus of Hollan et al, since such a modification would depend on the hazard being protected and one in the fire protection art would choose the appropriate fire pump suitable for the hazard being protected. Also, Williams teaches that such pumps are available in the fire fighting art and such pumps could be used in the system of Hollan et al.

As to the large water reservoir, note that Hollan et al discloses that the system can be used in areas where there are no water supply mains, for example in forest fires in rugged impassable terrain and that the system can be transported swiftly from site to site. It is known in the fire protection art when fighting forest fires that reservoirs such as lakes or ponds are readily used as a main source of water supply and would normally be used in the apparatus of Hollan et al in that situation.

Note the addition of “but no special approximately 2-1/2 inch inlet” is considered a negative limitation and is not given any patentable weight. The size of the water manifold inlet would be chosen depending on the size of the pump designed.

9. Claims 1, 2, 5-9, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollan et al in view of Worthington.

Hollan et al shows a fire fighting system comprising a pump 33; an around-the-pump system comprising a fitting at 29, a water manifold inlet 30, a line 31 on the suction side of the pump, an injection jet pump 26, a line 40 on the discharge side of the pump and a water additive including a foam concentrate 17, except for the location of the fitting upstream of the water manifold inlet, the size of the pump and the reservoir water source. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the fitting upstream of the water manifold inlet, since the drawing only shows a schematic drawing and the location of the fitting could be located upstream of the water manifold inlet without effecting the operation of the Hollan et al apparatus. Worthington teaches using pumps up 10,000 gpm in fire fighting systems and using reservoirs as water sources. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a 2000 or greater

gpm pump in the apparatus of Hollan et al, since such a modification would depend on the hazard being protected and one in the fire protection art would choose the appropriate fire pump suitable for the hazard being protected. Also, Worthington teaches that such pumps are available in the fire fighting art and such pumps could be used in the system of Hollan et al.

As to the large water reservoir, note that Hollan et al discloses that the system can be used in areas where there are no water supply mains and where fire trucks cannot be moved over land to the point of need, for example in forest fires in rugged impassable terrain and that the system can be transported swiftly from site to site. It is known in the fire protection art when fighting forest fires that reservoirs such as lakes or ponds are readily used as a main source of water supply and would normally be used in the apparatus of Hollan et al in that situation. Also, Worthington teaches that when water pumper fire truck vehicles are not available, they may be replaced by other water supplies such as reservoirs.

Note the addition of “but no special approximately 2-1/2 inch inlet” is considered a negative limitation and is not given any patentable weight. The size of the water manifold inlet would be chosen depending on the size of the pump designed.

10. Claims 1, 2, 5, 6, 8, 9, 13 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagliardo et al in view of Williams.

Gagliardo et al shows a fire fighting system comprising a pump 11; an around-the-pump system comprising a fitting at connection of line 10 at 13, a water manifold inlet 12, a line 13 on the suction side of the pump, an injection jet pump 27, a line 14 on the discharge side of the pump and a water additive including a foam concentrate 23, except for the size of the pump. Williams shows a fire fighting system using a 2000 or greater gpm pumps to fight fires. It would

have been obvious to one having ordinary skill in the art at the time the invention was made to provide a 2000 or greater gpm pump in the apparatus of Gagliardo et al, since such a modification would depend on the hazard being protected and one in the fire protection art would choose the appropriate fire pump suitable for the hazard being protected. Also, Williams teaches that such pumps are available in the fire fighting art and such pumps could be used in the system of Gagliardo et al.

Note the addition of “but no special approximately 2-1/2 inch inlet” is considered a negative limitation and is not given any patentable weight. The size of the water manifold inlet would be chosen depending on the size of the pump designed.

Response to Arguments

11. Applicant's arguments filed December 9, 2005 and March 22, 2006, have been fully considered but they are not persuasive.

In response to applicant's arguments concerning the claims 5 and 13 and the 35 U.S.C. 112, second paragraph rejection, note the examiner has also had to speculate what the applicant is attempting to claim as his invention and is only trying to make the record clear as possible to one of ordinary skill in art. The applicant also argues to be shown where, the line leading from the reservoir outlet to the fitting and the line from the fitting to the manifold on the suction side of the pump, is disclosed in the specification to be “essential to the invention”. Examiner has closely reviewed the specification and found that the applicant apparently did feel that the relationship of the fitting, the line and the manifold were essential to the invention, since there were four different species disclosed showing four different specific essential relationships.

However, in view of applicant's response, the applicant appears to be indicating that the location of the fitting in the line and their relationship with the water manifold inlet and pump are not essential to the invention, therefore, such language in the claims has not be given any patentable weight by the examiner and any arguments concerning such limitations are considered moot.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M,Tu, W and Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven J. Ganey
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sjg
6/12/06



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